

DRAFT May 5, 1986

HPSCI/SSCI Staff Comments on "Initial Discussion Draft April 25, 1986"

[Intelligence Retirement Issues]

Recommended changes to the initial discussion draft and the explanation for the changes is set forth below. A copy of the initial discussion draft marked to reflect the recommended changes is attached.

No. 1

Change: Page 1, line 1, add to Title IV caption: "AND RELATED MATTERS".

Reason: Although most of Title IV deals with CIA retirement, two provisions deal with NSA and DIA special employee retirement.

No. 2

Change: Page 1, Line 13, strike "Fund" and insert "fund".

Reason: Technical. Conforms to drafting custom of Title II, CIA Retirement Act.

No. 3

Change: Page 1, line 21, before the semicolon insert "and by striking 'Seven' in the first sentence of subsection (a) and inserting 'seven' in lieu thereof".

Reason: Technical. Since "seven" will no longer be the first word in the sentence, it should no longer be capitalized.

No. 4

Change: Page 3, line 12, strike "such".

Reason: Technical. Use of "the such" would appear to have been a typographical error.

No. 5

Changes: Page 5, line 13, in the caption for Section 302, insert "CRITERIA" after "SECTION 203"; on page 5, line 14 strike "(1)"; and on Page 5, line 18, insert "the criteria set forth in" after "under".

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Reason: Eliminates potential confusion. Section 203 of the CIA Retirement Act permits the DCI to designate as CIARDS participants Agency personnel whose duties are "(i) in support of Agency activities abroad hazardous to life or health or (ii) so specialized because of security requirements as to be clearly distinguishable from normal government employment. . . ." The HPSCI/SSCI drafting guidance stated that the Section 203 criteria should be used in defining the new special category of CIA employees to be accorded law enforcement/firefighter preferential retirement treatment. The initial discussion draft uses the term "Section 203 employee" as a shorthand reference to the new special category CIA employees. This is confusing, because a Section 203 employee, literally speaking, is a CIARDS participant. A better practice would be to refer to the new special category of CIA employees as "Section 203 criteria employees," which indicates only that the criteria of Section 203 apply to them, not that they are employees to which Section 203 itself refers. (Note: "(1)" is stricken on line 14 as unnecessary; subsection 302(a) only contains a single paragraph).

No. 6

Change: Page 6, lines 6 - 8, change "(3) Upon reverting to a retired status, the annuity of an officer or employee recalled under this subsection" to read "(3) When an officer or employee recalled under this subsection reverts to a retired status, the annuity of such officer or employee".

Reason: Grammatical. The annuity does not revert to a retired status.

No. 7

Change: Page 6, line 19, after "service abroad" insert "after the date of enactment of the Federal Employee Retirement System Act of 1986".

Reason: As the HPSCI/SSCI drafting guidance states, the accrual rate increase for years of service abroad as non-CIARDS CIA, special NSA, or DIA attache or liaison is prospective only.

No. 7A

Change: Page 7, line 20, insert "and (d)" before the period.

Reason: Preserves existing provision in Section 222(d) of CIA Retirement Act for priority of court order, spousal agreement or election over presumption of entitlement.

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No. 8

Change: Page 7, line 21, after "subsection (b)" insert "of this section".

Reason: Eliminates confusion and possible misinterpretation. The "subsection (b)" waiver to which the provision refers is the joint employee/former spouse waiver under subsection 304(b), which makes applicable to CIA FRS employees the joint waiver provided by Section 221(b) (1) (C) of the CIA Retirement Act applicable to CIA CIARDS employees.

No. 9

[Change No. 9 provided for striking the language changing the former spouse annuity computation percentage from 55% to 50%. Because the conferees have tentatively agreed to the 50% figure with respect to other federal employees spouses, Change No. 9 is not needed.]

No. 9A

Change: Page 9, line 18, strike "section" and insert in lieu thereof "subsection".

Reason: Technical.

No. 9B

Change: Page 11, line 6, insert "(including authorizing and directing disbursement of monies from the Civil Service Retirement and Disability Fund and from the Thrift Savings Fund)" after "duties".

Reason: Makes clear that the functions and duties which the Director of Central Intelligence may perform with respect to CIA FRS personnel, which would otherwise be performed by the Director, OPM or the Executive Director of the Thrift System, include authorizing and directing disbursement of monies from the Civil Service Retirement and Disability Fund and the Thrift Savings Fund to enable CIA to pay sums owing to CIA FRS employees in accordance with the provisions of chapter 84 of title 5. Although the phrase "functions and duties" standing alone would appear to include the function and duty of authorizing and directing disbursements due to employees, the parenthetical phrase is included to remove any possibility of doubt. The disbursement authority of the Director of Central Intelligence with respect to CIA FRS employees is an important element of ensuring that CIA administers all aspects of retirement systems applicable to CIA employees, to improve security.

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No. 10

Change: Page 11, line 12, strike "The" and insert "Notwithstanding any provision of chapter 84 of title 5, United States Code, the" and on Page 11, line 14, insert ", to the extent considered appropriate by the Director" after "may".

Reason: Conforms the Thrift Executive Director/DCI relationship to the provision on page 10 - 11 concerning the Director, OPM/DCI relationship. In both cases, the DCI determines the extent to which he needs to assume the responsibilities of external entities for administering the FRS as it applies to CIA employees.

No. 11

Change: Page 11, line 19, strike the bracketed material.

Reason: Unnecessary.

No. 11A

Change: Page 11, line 24, insert "the necessary disbursements from, and" after "make", and on Page 11, line 25 insert a comma after "to".

Reason: Makes clear that the Director of Central Intelligence may pay sums owing to CIA FRS employees from the Thrift Savings Fund in accordance with the provisions of chapter 84 of title 5, and may obtain from the Thrift Savings Fund the sums necessary to enable CIA to do so. The Thrift Savings Fund disbursement authority of the Director of Central Intelligence with respect to CIA FRS employees is an important element of ensuring that CIA administers all aspects of retirement systems applicable to CIA employees, to improve security.

No. 12

Change: Page 12, line 13, change subsection (d) to read:

"(d) (1) In the administration of chapter 84 of title 5, United States Code, under this section, section 201(c) of this Act shall apply.

"(2) Notwithstanding paragraph (1), section 8461(e) of title 5, United States Code, shall apply with respect to officers and employees of the Central Intelligence Agency who are neither participants in the Central Intelligence Agency Retirement and Disability System nor section 203 criteria employees designated under section 302(a) (1) of this Act."

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Reason: The HPSCI/SSCI drafting guidance concluded that, for security reasons, all aspects of CIA retirement should be brought inside the CIA and kept there. Paragraph (1) accomplishes that for new CIA FRS employees. The guidance also concluded that there should be an important exception to this principle: CIA CSRS and FRS employees should retain the right to appeal adverse retirement determinations to the MSPB and the federal courts. Paragraph (2) accomplishes that for CIA FRS employees.

No. 12A

Change: Page 12, line 25, insert "(including procedures for inspection and audit by the Director of the Office of Personnel Management with respect to disbursements from the Civil Service Retirement and Disability Fund and by the Executive Director of the Thrift Investment Management System with respect to disbursements from the Thrift Savings Fund)".

Reason: Provides for procedures to permit the Director, OPM to inspect and audit disbursements with respect to CIA FRS employees from the Civil Service Retirement Fund and to permit the Executive Director of the Thrift Investment Retirement System to inspect and audit disbursements with respect to CIA employees from the Thrift Savings Fund.

No. 13

Change: Page 13, lines 1 through 5, revise the subsection to read "(b) The regulations prescribed under subsection (a) shall be submitted to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before they take effect.".

Reason: Provides the same reporting requirement for CIA FRS retirement regulations as applies to CIA CIARDS retirement regulations under Section 201(a) of the CIA Retirement Act, as provided for in the HPSCI/SSCI drafting guidance.

No. 14

Changes: Page 13, line 7, insert "(a) before "The" and after line 13, add the following new subsection: "(b) The regulations prescribed under subsection (a) shall be submitted to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives before they take effect.".

Reason: Provides the same reporting requirement for transition regulations as applies to CIA CIARDS retirement regulations under Section 201(a) of the CIA Retirement Act, as provided for in the HPSCI/SSCI drafting guidance.

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No. 14A

Change: Page 13, immediately before line 14, add the following new section to title III of the CIA Retirement Act as enacted by Section 404 of the bill:

"SEC. 308. (a) The provisions of chapter 84 of title 5, United States Code, shall not apply with respect to any individual who separates, or who has separated, from the federal service after--

"(1) having been an employee subject to title II of this Act; and

"(2) having completed at least 5 years of civilian service creditable under title II of this Act (determined without regard to any deposit or redeposit requirement under subchapter III of chapter 83 of title 5, United States Code, or under title II of this Act, or any requirement that the individual become subject to such subchapter or to title II of this Act after performing the service involved).

"(b) Subsection (a) shall not apply with respect to an individual who has elected under title III of the Federal Employees Retirement System Act of 1986 to become subject to chapter 84 of title 5, United States Code, to the extent provided in title III of such Act.

"(c) For purposes of Section 8401(11)(B)(ii) of title 5, United States Code, an individual described in subsection (a) shall be deemed to be an individual excluded under Section 8402(b) of title 5."

Reason: Section 308(a) ensures that individuals who have served at least 5 years of federal civilian service and have become CIARDS participants, who leave CIA (whether by retirement or resignation), and are later re-employed by the federal government, do not thereby become subject to chapter 84 of title 5, United States Code. Subsection 308(b) preserves such an individual's option to elect to become subject to chapter 84 of title 5, United States Code, if the individual prefers to participate in the new Federal Employees Retirement System. Subsection 308(c) has the effect of excluding such an individual from the definition of "employee" for purposes of chapter 84 of title 5, conforming the definitional exclusion in Section 8401(11)(B)(ii) to the specific exclusion in subsection 308(a). Section 308 is patterned after Section 8402(b)(2) of proposed chapter 84 in title 5, United States Code.

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No. 14B

Changes: Page 14, line 1, insert "(including authorizing and directing disbursement of monies from the Civil Service Retirement and Disability Fund)" after "duties".

Reason: Makes clear that functions and duties which the Director of Central Intelligence may perform with respect to CIA CSRS personnel, which would otherwise be performed by the Director, OPM, include authorizing and directing disbursement of monies from the Civil Service Retirement Fund to enable CIA to pay sums owing to CIA FRS employees in accordance with the provisions of chapter 83 of title 5. Although the phrase "functions and duties" standing alone would appear to include the function and duty of authorizing and directing disbursements due to employees, the parenthetical phrase is included to remove any possibility of doubt. The disbursement authority of the Director of Central Intelligence with respect to CIA employees is an important element of ensuring that CIA administers all aspects of retirement systems applicable to CIA employees, to improve security.

No. 14C

Change: Page 14, line 19, insert "(including procedures for inspection and audit by the Director of the Office of Personnel Management with respect to disbursements from the Civil Service Retirement and Disability Fund)".

Reason: Provides for procedures to permit the Director, OPM to inspect and audit disbursements with respect to CIA CSRS employees from the Civil Service Retirement Fund.

No. 15

Change: Page 14, line 21, strike the text of (B) after "paragraph" up to and including "regulations", insert "shall be submitted" after "paragraph", and insert "before they take effect" after "Representatives".

Reason: Provides the same reporting requirement for CIA CSRS retirement regulations as applies to CIA CIARDS retirement regulations under Section 201(a) of the CIA Retirement Act, as provided for in the HPSCI/SSCI drafting guidance.

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No. 16

Change: Page 14, line 25, after the first period insert the following new paragraph:

"(5)(A) In the administration of this subchapter under this subsection, section 201(c) of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees shall apply.

"(B) Notwithstanding subparagraph (A), section 8347(d) of this title shall apply with respect to officers and employees of the Central Intelligence Agency who are participants in the Civil Service Retirement System."

Reason: The HPSCI/SSCI drafting guidance concluded that, for security reasons, all aspects of CIA retirement should be brought inside the CIA and kept there. Paragraph (5)(A) accomplishes that for CIA CSRS employees. The guidance also concluded that there should be an important exception to this principle: CIA CSRS employees should retain the right to appeal adverse retirement determinations to the MSPB and the federal courts. Paragraph (5)(B) accomplishes that.

No. 17

Change: Page 15, strike section 406, and redesignate section 407 as 406.

Reason: Unnecessary. In developing the retirement legislation, the issue of whether to expand to new groups of CIA employees the preferential CIA retirement benefits (or to contract the existing group) has been fully aired, and the Section 203 criteria have been retained as the appropriate definition of the groups which deserve preferential retirement benefits.